

Appl. No. 10/803,126
Docket No. 9183M&
Paper dated September 4, 2009
Reply to Office Action mailed on March 4, 2009

REMARKS

Claim Rejections 35 USC § 103 (a)

Claims 1-3, 8, 11, 12, 14, 15 and 17-28 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Johnson et al. (US 2003/0215522). Applicants respectfully traverse the rejection.

Johnson et al. was filed on March 18, 2003, which claims priority to provisional application 60/374,346, filed on April 22, 2002. Johnson et al. was subsequently published on November 20, 2003.

The instant application was filed on March 17, 2004 and claims priority to provisional application 60/455,780, filed on March 18, 2003.

Since the publication date of Johnson et al., namely, November 20, 2003, is later than the priority date of the present application, which is March 18, 2003, Johnson et al. does not qualify as section 102(a) prior art with respect to the instantly claimed invention.

Since Johnson et al. was published (November 20, 2003) less than one year before the instant application was filed (March 17, 2004), Johnston et al. is not properly prior art under 102(b) either.

Applicants respectfully submit that Johnston et al. is not properly useable as prior art under 102(c),(d),(f) and (g) either. Accordingly, Johnston et al. can be considered as prior art only under subsection 102(e).

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Statement Under 35 USC 103(c)(2)

In view of the provisions of 35 U.S.C. 103(c)(2), it is respectfully submitted that Johnston et al. does not preclude patentability of the claimed invention under 103(a). The reasons are as follows: (1) the instantly claimed invention was made by or on behalf of Procter & Gamble Company (P&G) and Arch Chemicals, Inc. pursuant to a joint research agreement between P&G and Arch Chemicals, Inc. This agreement qualifies as a Joint Research Agreement within the meaning of 35 U.S.C. 103(c)(3) since it was in effect prior to the date that the claimed invention was made; (2) the claimed invention was made as a result of activities undertaken within the scope of the Joint Research Agreement; and (3) the specification has been amended herein to disclose the names of the parties to the joint research agreement.

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In view of these reasons, Johnson et al. cannot be used as section 102(e) prior art to preclude the patentability of the instant claim. Since Johnson et al. does not qualify as prior art under any of the subsections of section 102, it cannot be relied upon to reject the claims under 103 section. Accordingly, the rejection is untenable and should be withdrawn.

The Double Patenting Rejection

Claims 1-3, 8, 11, 12, 14, 15, and 17-28 are provisionally rejected on the grounds of nonstatutory obvious-type double patenting as being unpatentable over claims 1, 2, 17, 27-31 and 40 of copending Application No. 11/602,770.

In response to the above rejection, Applicants hereinwith submit a Terminal Disclaimer. Applicants respectfully believe that the Terminal Disclaimer serves to address this double patenting rejection. Accordingly, withdrawal of the double patenting rejection is respectfully requested.

Allowable Claims

In view of the above remarks, and the accompanying Terminal Disclaimer, the instant claims are respectfully believed to be in a condition for allowance. Accordingly, a Notice of Allowance is respectfully requested.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the double patenting rejection. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-3, 8, 11, 12, 14, 15 and 17-28 is requested.

Respectfully submitted,
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